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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

WILFRED ATLAS,

Defendant and Appellant.

B216361

(Los Angeles County  
Super. Ct. No. BA345850)

APPEAL from an order of the Superior Court of Los Angeles County,  
William C. Ryan, Judge. Affirmed.

Wilfred Atlas, in pro. per.; and Jean Ballantine, under appointment by the Court of  
Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

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On September 29, 2008, defendant Wilfred Atlas was charged by information with two counts of resisting an executive officer (Pen. Code, § 69),<sup>1</sup> with an allegation as to both counts the offense was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(A)). The information also specially alleged as to both counts that defendant had suffered a serious or violent felony conviction on September 28, 2006 for attempted grand theft of a firearm (§ 487, subd. (d)(2)) in case No. BA308588,<sup>2</sup> within the meaning of the “Three Strikes” law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and had previously served two separate prison sentences for felonies (§ 667.5, subd. (b)). Defendant entered a plea of not guilty to the charged offenses and denied the special allegations. He was represented by appointed counsel throughout the proceedings.

Defendant’s motions to dismiss the prior strike conviction (§ 1385; *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) and to set aside the information (§ 995) were heard and denied respectively on October 29, 2008 and January 13, 2009. The defendant and the People announced ready for trial, but without objection the trial court granted a continuance and ordered a transcript of the plea hearing in case No. BA308588.

On May 4, 2009, the day of trial, a plea agreement was reached in which defendant was to plead no contest to one count of resisting an executive officer and to admit the prior strike allegation. In return, the remaining count and special allegations would be dismissed on the People’s motion.

At the time he entered his plea, defendant was advised of and waived his constitutional rights and was advised of and acknowledged he understood the consequences of his plea and admission. In particular, the record of the plea hearing shows after consulting with defense counsel, defendant admitted the prior strike allegation in case No. BA308588. Defense counsel joined in the waivers of defendant’s constitutional rights and stipulated defendant’s plea was entered into pursuant to *People*

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<sup>1</sup> Statutory references are to the Penal Code.

<sup>2</sup> Case numbers refer to Los Angeles Superior Court cases.

*v. West* (1970) 3 Cal.3d 595. Defense counsel also joined in the admission, although counsel told the court he remained unconvinced of the adequacy of the constitutional rights advisement in the prior strike case. Reminding counsel it had reviewed the plea hearing transcript at his request, the court stated it found defendant to have been adequately advised of his constitutional rights in that case.<sup>3</sup>

In accordance with the plea agreement, defendant was sentenced to an aggregate term of 32 months in state prison for resisting an executive officer, consisting of the lower term of 16 months doubled under the Three Strikes law. The trial court ordered defendant to pay a \$20 security fee, a criminal conviction assessment of \$30, and a \$200 restitution fine. A parole revocation fine was imposed and suspended pursuant to section 1202.45. Defendant presentence custody credit of 373 days (249 actual days, 124 days of conduct credit).

Defendant filed a timely notice of appeal; his request for a certificate of probable cause was granted. As grounds for the request, defendant asserted, “The transcript of the alleged prior strike conviction from 9/28/2006 fails to state on the record that a 664/487(D)(2) [sic] is a strike. [¶] Under the law, defendant believes a certificate of probable cause be granted to litigate the validity of the admission to the prior strike alleged in the information” in this case.

We appointed counsel to represent defendant on appeal. After examination of the record counsel filed an opening brief in which no issues were raised. On August 27, 2009, we advised defendant he had 30 days within which to personally submit any contentions or issues he wished us to consider. On September 24, 2009, we received a handprinted supplemental brief in which he contends his defense counsel rendered constitutionally ineffective assistance and the testifying police officers lied at the preliminary hearing.

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<sup>3</sup> The transcript of the plea hearing in case No. BA308588 is not part of the record on appeal.

Defendant is precluded from challenging his sentence because it was a negotiated component of his plea agreement: “The rule that defendants may challenge an unauthorized sentence on appeal even if they failed to object below is itself subject to an exception: Where the defendants have pleaded guilty in return for a *specified* sentence, appellate courts will not find error even though the trial court acted in excess of jurisdiction in reaching that figure, so long as the trial court did not lack *fundamental* jurisdiction. The rationale behind this policy is that defendants who have received the benefit of their bargain should not be allowed to trifle with the courts by attempting to better the bargain through the appellate process.” (*People v. Hester* (2000) 22 Cal.4th 290, 295.)

Additionally, defendant waived his right to challenge the nature and sufficiency of the evidence presented at his preliminary hearing by his plea of no contest. (See *People v. Turner* (1985) 171 Cal.App.3d 116, 126; *People v. Wakefield* (1987) 194 Cal.App.3d 67, 69-71.) Accordingly, the issue is not cognizable on appeal.

For his claim of ineffective assistance of counsel, defendant is relegated to habeas corpus proceedings at which evidence outside the appellate record may be taken to determine the basis, if any, for defense counsel’s conduct or omission. (See *People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.) In any event, the record fails to demonstrate defense counsel provided ineffective assistance at any time during the proceedings in the trial court. (*Strickland v. Washington* (1984) 466 U.S. 668, 686 [104 S.Ct. 2052, 80 L.Ed.2d 674].)

We have examined the entire record and are satisfied defendant's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

The judgment is affirmed.

ZELON, J.

We concur:

WOODS, Acting P. J.

JACKSON, J.